

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C. 20423**

**Docket No. AB 290 (Sub-No. 286)
NORFOLK SOUTHERN RAILWAY COMPANY--
ADVERSE ABANDONMENT--
ST. JOSEPH COUNTY, IN**

221943

PETITION TO REOPEN

Come now the City of South Bend, the Brothers of Holy Cross, Inc. and the Sisters of the Holy Cross, Inc. (hereinafter collectively referred to as "Petitioners"), by and through counsel of record, and, pursuant to the provisions of 49 CFR § 1115.4, file this petition to reopen based on new evidence that was not previously available to Petitioners. By its Decision, served February 14, 2008, the Board denied the adverse abandonment filed by Petitioners when it concluded that "[t]he record, however, shows that there is a potential for renewed rail operations. There is traffic suitable for rail that could move over the Lines, there is a railroad willing to carry that traffic, and there is at least one shipper capable of receiving that traffic." Slip op. at 4. Although not mentioned by name, the shipper is presumed to be the University of Notre Dame.

Petitioners are aware that the University of Notre Dame, by letter addressed to all Board members with a copy being forwarded to Petitioners, has notified the Board that, after reviewing the Board's Decision, it "does not currently ship using this line, nor does it intend in the future to utilize this rail line for any shipping purposes, whether to receive or deliver goods to or from the University." Letter to Surface Transportation Board from John Affleck-Graves, Executive Vice President, University of Notre Dame du Lac, dated March 26, 2008. See Attachment A hereto.

As is also explained in the March 26 letter, "[w]e currently receive our coal shipments off of the Norfolk Southern Railway via trucking from a transload facility. This has and will

continue to serve our needs very well. Further, there is no need for rail delivery of any other commodity to the university.” When coupled with the additional comment that “[w]e have no contract with nor do we have any intent to contract with any rail operator along this line,” there can be no doubt that any effort to resume rail service over the line would be fruitless.

Plainly, Notre Dame’s forthright comments rebut the finding that “the potential remains for a resumption of direct rail service.” The Lines have no present or future utility as instruments of interstate commerce. Therefore, Petitioners join with Notre Dame in stating that “We do not believe that renewed rail service along the line proposed to be abandoned is in the best interests of the University nor the community at large.”

Even if the Board’s prior conclusion were presumed to be correct, the new evidence regarding the University of Notre Dame’s determination that it has no need for rail delivery of coal or any other commodity, which came available only after the Board issued its decision on February 14, 2008, has negated whatever validity the Board’s prior conclusions may have had. Because the Lines have not been operated since the mid-1990’s and because there is no possibility that any shipper will utilize the Lines in the future for the delivery of freight, there is no evidence whatsoever to support a finding that there is a present or future public need for rail service over the Lines.

Conclusion

Because no overriding Federal interest exists that would warrant and justify the further protection of the Lines as part of the interstate rail system, the adverse abandonment application filed by Petitioners should be granted at this time without further delay.

Respectfully submitted,

Jeffrey M. Jankowski /s/

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Dated: March 28, 2008

Attachment A



UNIVERSITY OF NOTRE DAME

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March 26, 2008

Surface Transportation Board
Chairman Charles D. Nottingham
Vice Chairman Francis P. Mulvey
Member W. Douglas Buttrey
395 E Street, S.W.
Washington, D.C. 20423-001

Re: AB 290-286 Norfolk Southern Railway Company - Adverse Abandonment - St. Joseph County, Indiana

Dear Chairman Nottingham:

Please be advised that I am the Executive Vice President of the University of Notre Dame du Lac located in St. Joseph County, Indiana. I have had the opportunity to review the Surface Transportation Board's Decision in the above noted Docket Number. In doing so, I note that the University of Notre Dame is addressed as a "potential" shipper and user of the subject railway line which has been petitioned to be abandoned.

Please let me be clear in this correspondence that the University of Notre Dame du Lac does not currently ship using this line, nor does it intend in the future to utilize this rail line for any shipping purposes, whether to receive or deliver goods to or from the University. We currently receive our coal shipments off of the Norfolk Southern Railway via trucking from a transload facility. This has and will continue to serve our needs very well. Further, there is no need for rail delivery of any other commodity to the university.

We do not believe that renewed rail service along the line proposed to be abandoned is in the best interests of the University nor the community at large. We have no contract with nor do we have any intent to contract with any rail operator along this line.

I hope that this letter clears any misconception of the University's intentions regarding the rail line concerned in this matter.

Sincerely,

John Affleck-Graves
Executive Vice President

Cc: City of South Bend
Brothers of Holy Cross
Sisters of the Holy Cross

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Petition was served this 28th day of March, 2008, by first-class mail, postage prepaid, and by e-mail as designated, on the following named individuals:

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